

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SCOTT BECKER,
Plaintiff,

v.

J. MICHAEL SHERB, et al.,
Defendants.

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CIVIL ACTION NO.
3:07-cv-1643 (JCH)

June 24, 2008

RULING RE: DEFENDANT SHERB'S MOTION TO DISMISS (Doc. No. 10)

The defendant, Michael Sherb, filed a Motion to Dismiss on May 2, 2008, seeking to dismiss the Complaint against him for lack of personal jurisdiction. Sherb asserts that the plaintiff failed to make service upon him within the time limit (120 days) set for service of process in Fed. R. Civ. P. 4(m). Despite being sent a copy of the Motion, plaintiff has not responded to it. Under the Local Rules, he had 21 days to do so. D. Conn. Civ. R. 7(a)(1).

The court, having reviewed the Motion and Memorandum in Support, finds that the plaintiff did fail to timely serve his Complaint. Fed. R. Civ. P. 4(d)(4) provides that the effect of filing the waiver is to effect service as of that date. However, because the plaintiff did not send the Waiver and related papers to Sherb until March 5, 2008, the service was not timely. Mem. In Support (Doc. No. 11) at A. Sherb had 30 days to return the waiver pursuant to Fed. R. Civ. P. 4(d)(1)(F). Sherb timely returned the waiver on March 25, 2008. Mem. In Support (Doc. No. 11) at B. The plaintiff filed the waiver on April 24, 2008 (Doc. No. 8), more than 120 days after the filing of the Complaint.

As noted, the plaintiff has not opposed the Motion to Dismiss and has not sought

relief from the 120 day limit. Under Rule 4, the court “must” dismiss the Complaint. Fed. R. Civ. P. 4(m). Therefore, the court grants Sherb’s Motion to Dismiss (Doc. No. 10).

SO ORDERED.

Dated at Bridgeport, Connecticut this 24th day of June, 2008.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge